



Jordan C. Wolff, Esq.

WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —
ATTORNEYS AT LAW
The Wilenchik & Bartness Building
2810 North Third Street Phoenix Arizona 85004

jordanw@wb-law.com

Telephone: 602-606-2810 Facsimile: 602-606-2811

13 May 2021

SENT VIA E-MAIL

Katie Hobbs, Arizona Secretary of State
c/o Josh Bendor, Legal Counsel
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012
jbendor@omlaw.com

Re: Audit of 2020 General Election

Dear Mr. Bendor:

We are in receipt of your May 11 letter, which is yet another manifestation of your client's unfortunate decision to treat the settlement agreement, and its protocols for good faith consultation, primarily as a vehicle for political posturing.

As we made clear before its execution, the settlement agreement requires Cyber Ninjas, Inc. (“**Cyber Ninjas**”) to promulgate, disclose, and enforce policies designed to ensure ballot security; the agreement does not confer on your client (or anyone else) a veto power over the particular parameters and provisions of those policies. As stated in the May 7 letter from Secretary Bennett, Cyber Ninjas undisputedly maintains a chain of custody protocol for ballots, which was produced to you some time ago; your client's assertion that the documentation is insufficiently detailed is both incorrect and fails to delineate a violation of any settlement provision. Similarly, your client's preferred fence height specifications—an issue that was also addressed in the May 7 correspondence—are untethered from both the settlement agreement and any source of law.

We have been unable to corroborate your purported concerns about ballots being left “unattended” on counting tables. This is primarily because your letter fails to provide any actionable information; without even an approximate indication of the time and location of the so-called “unattended” ballots, we are unable to identify any instance in which ballots remained on counting tables without at least one audit team member physically present within the designated ballot tabulation area. And without more specific information, it is impossible to ascertain whether and to what extent any corrective action (e.g., remedial training or reassignment of audit personnel) is necessary. Further, the counting tables are under 24/7, live-streamed video surveillance, so any mischief associated with allegedly “unattended” ballots should be very well documented and remediable if necessary.



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

Josh Bendor
13 May 2021
Page 2 of 2

With respect to the sealing of ballot boxes, the relevant provision of the Counting Floor Policies was premised on the assumption that Maricopa County would deliver the ballot batches secured by tamper-evident seals, which Senate auditors would re-apply after the completion of tabulation activities. In fact, it seems that neither the boxes nor the ballot bags they contain were consistently sealed by Maricopa County in the first instance. We do not interpret the policies you cited as requiring Cyber Ninjas to devise and apply a sealing regime to ballot boxes that had never been sealed in the first place.

As you noted, the audit will be briefly suspended later this month while the Veterans Memorial Coliseum hosts several graduation ceremonies. During this hiatus, ballots and tabulation equipment will remain on the State Fair Grounds and will be stored and secured pursuant to the policies and procedures attached hereto as **Exhibit A**.

Finally, we note that your most recent letter provides further evidence that, before the ink on the settlement agreement had dried, your client embarked on (and continues still) a campaign to undermine and destabilize it. Section 11 of the settlement agreement was intended to serve as a mechanism for constructive discussion, not partisan grandstanding, allegations unsupported by evidence, and the dictation of terms that your client and her co-plaintiffs were unable to secure through litigation. We therefore believe your letter is intended primarily to attract credulous coverage in the media, which is to say political rather than legal goals. Such conduct likely breaches the requirement of good faith consultation under Section 11 and the implied covenant of good faith and fair dealing, and any litigation ostensibly seeking to enforce the groundless demands set forth in your most recent letter may justify claims for abuse of process.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Jordan C. Wolff', with a stylized, flowing script.

Jordan C. Wolff, Esq.

JCW
Exhibit A – Secured Transfer of Tabulation Machines

cc: Kory Langhofer, Esq
Thomas Basile, Esq

EXHIBIT A



General Rules/Requirements for Transfer and Storage of Election Ballots and Tabulation Machines

Audit Chain of Custody Requirements

All election ballots and tabulation machines will maintain in the constant Chain of Custody with the current Senate designees and Custodians of Records. For this reason, any movement of the secure trailers requires their notification and participation. During an emergency when said ballots and tabulation machines are under imminent threat, the secure trailers may be moved pursuant to the specific terms of this plan, but the Custodians of Records, Cyber Ninjas, and on-call videographers must be notified immediately.

Ballot and Equipment Designations

There have been designations given to the Ballots and Ballot equipment that are required to be protected 24/7. The designations include the following:

1. Uncounted Ballots
2. Ballots in Process
3. Completed Ballots
4. Tabulation Machines

The process of packaging, loading, transporting, and unloading will consist of the following procedures:

Packaging and Loading

1. Documented video and chain of custody evidence of packaging as required by the Senate and Maricopa County Elections Board will be maintained to ensure the custody of the ballots and tabulation machines remains consistent.
2. Designated ballots and tabulation machines to be packaged onto pallets accordingly.
3. Tabulation machines not palletized will remain on the carriers in which they were originally packaged/shipped by Maricopa County.
4. All pallets will be plastic shrink wrapped to ensure ballot boxes and/or tabulation machines do not fall or separate from their designated pallets.
5. Pallets and tabulation machines will be loaded into trucks by designated number in the following manner:
 - a. Each truck will be numbered and have a Ballot/Tabulation machine Manifest detailing the contents of said truck.
 - b. After loading the designated ballots and or tabulation machines onto each truck, the trucks rear cargo door will be closed, locked, and sealed with the seal designation being written on the Manifest.
6. A copy of the Manifest will be maintained in each secured trailer and the original will be maintained by the Custodian of Records.

Transportation of Ballots and Tabulation Machines from Coliseum to Building B

1. Security and video escort of the ballots and tabulation machines from Coliseum to Building B across fairgrounds whilst a carnival is in progress.
2. After departing the east loading bays of the Coliseum traveling south, trucks and evidence trailers will enter the secure temporary storage area from the west entrance and place each secured evidence trailer in one row from south to north across the evidence storage area.
3. At no time during the transportation process will a secure trailer be opened nor have its seal broken unless there is a verified emergency, and the seal must be broken to protect the contents of the evidence trailer.

4. Emergency response to any threats that present itself during transportation.
5. Video recording of transportation processes for auditing, chain of custody, and evidence in the case of any criminal and/or civil proceedings.

Housing of Ballots and Tabulation Machines at Secure Building B Location

1. After the trailers are placed in Building B, they will be monitored by 24/7 video and security surveillance and on-site security personnel.
2. At no time during the storage process will a secure trailer be opened or have its seal broken unless in times of a verified emergency and unloading the evidence trailer is required to protect the evidence.

Security Risk Management Building B Storage Facility/HSSE Facility Assessment

The fairgrounds agricultural building (Building B) has been identified as the temporary facility and is located adjacent to McDowell Street and to the South of the current location and has being prepared by fairgrounds staff for use by the Audit. A facility HSSE assessment was completed on 05/09/2021 which included the following:

Workplace and Environment (Power/Utilities/Facility Amenities included)

Physical Security

Law Enforcement and Security Guard Operations

Parking Controls

Security Systems and access control

Internal Security and Controls

Employee Controls

Emergency HSSE Procedures

As a result of the assessment the following mitigation requirements are planned for and will be put in place prior to the move. The HSSE requirements for the building operations and the movement will be completed by 1500 hours on Thursday 5/13/2021.

HSSE Requirements (Fire/Medical)

All building fire equipment and suppression systems have been tested to State regulations and are current. Medical equipment on site includes AED and the audit will provide first aid kits to be used in emergencies by on site staff as required.

OSHA regulatory reporting requirements are documented and will be done as required.

Security Sweep and K-9 Services

The building will be security swept and cleared by both security personnel and K-9 units prior to permanent occupation of the building for the storage. Once completed, the building will be under 24/7 security control until the ballots, and equipment is transported back to the Coliseum at the planned time for count restarting.

Perimeter Security

The perimeter security controls will consist of the following:

1. Perimeter chain link fence which will be installed on Wednesday 5/12/2021 by National Fencing.
2. Guard Management. This will be done by contract with the Senate for LES Services to provide LEO's for 24/7 law enforcement guard services between the dates of the move and storage.
3. Physical locks and controls placed in key perimeter entrances to ensure security of entry into the building is restricted to authorized persons only.

4. Security seals will be placed on all doors prior to building use and will be checked regularly for breaches for further action as required. These will remain in place and updated accordingly as the storage requirements change.
5. Perimeter lighting is sufficient for the nighttime hours and will be supplemented in the event of damage or outage where lighting and visibility is reduced.

Access Control

All access into the building will be by a single entrance located on the west side of the building. Garage doors will be utilized as movement requires and then secured when all equipment is in situ on site. Access controls will include credentials and physical logs where required to ensure records are kept and available for audit security and reviewing purposes.

Only authorized audit staff and emergency services will be allowed access into the building for the duration of the movement and storage.

Internal Security Controls

During the period of storage, 24/7 law enforcement services will be on site on the exterior and interior providing guard and emergency services. They will have post orders and be controlled by WAKE TSI, HSSE, and Senate requirements.

In the event of a building breach, or if unauthorized access is gained into the building, law enforcement will carry out sworn police officer duties they have under Arizona State and Federal laws to ensure the protection and safe custody of the ballots and tabulation machines.

Phoenix PD and DPS station locations are within 5 minutes of the fairgrounds for response in the event onsite law enforcement staff require immediate support.

Live Streaming and CCTV

Audit IT and associated services are establishing a live video feed which will be operating inside the venue 24/7 for the duration of the storage. This feed will be recorded and live streamed off site and controlled by audit IT services.

Operational and Information Security Policies

All information and documents relating to the movement is considered confidential and not for public information and should be treated as such. No documents should be made available to the public or unauthorized personnel. This is to ensure that the information does not end up in the public arena and therefor compromise the movement or storage of the ballots and tabulation machines which may occur due to the current threat environment.

Guard Force Management

For the duration of the storage of ballots and tabulation machines, the building is considered as private property and not public space so any transgression of the fenced and marked perimeter outside the building is considered as criminal trespass and will be dealt with by law enforcement on site as appropriate.

Scheduling will be maintained by LES and the audit HSSE team to ensure 24/7 coverage is maintained during the term of the storage. In the event a change in the schedule occurs, contingency will be made to accommodate supplemental services with LES.

Rules of Engagement

Any breaches of criminal law will be dealt with by law enforcement on site in accordance with their statutory powers of arrest under Arizona State Law.

Secured Loading/Transfer/Storage of Tabulation Machines

The afternoon/evening of Thursday, 5/13/21 a 53' trailer (with lift gate) will be placed into the South Hall of the Coliseum to transport all tabulation machines to Building B at the Arizona State Fairgrounds. That equipment will be loaded for transport under the supervision of the Custodian of Record. Once the trailer is loaded, locked, & sealed, we will discontinue two of the four live camera feeds from the tabulation machine audit area and relocate those cameras to the new onsite storage facility. That sealed trailer will remain inside the Coliseum until the next morning with the two remaining cameras focused on it.

Establishing Building B Live Feed

Friday morning, 5/14/21, we will activate the live cameras in the new onsite storage facility. Once the live feed has been confirmed, we will transfer the trailer containing the tabulation machines to that facility. All tabulation machines and/or ballots that are transferred from the coliseum to the new storage facility will have accompanying video of such transport to cover the gap in time between the two live camera feeds for each sealed trailer. When that trailer has been moved, and the immediate area no longer contains sensitive data and/or equipment, we will turn off the remaining live feed cameras in that area of the Coliseum.

Secured Loading/Transfer/Storage of Ballots

Pallet Moving & Storage Process

The ballots are currently stored in 4 separate ballot corrals.

Corral A - Full shrink-wrapped pallets that have not been opened and not been counted

Corral B - Completed boxes that have been counted and processed through paper examination

Corral C - The holding corral with boxes that have been counted but not processed through paper examination, boxes that have been partially counted and partially examined by PE

Corral D - Senate holding corral with ballots that potentially contain PII or duplicates

The ballot boxes will be palletized in their designated corrals and each box will be identified and recorded prior to being loaded on the pallet. Full pallets will be shrink wrapped and labeled with the pallet ID.

For each pallet, a complete manifest will be created. The manifest will include a list of all boxes on the pallet. For each box on the pallet, we will record the following information:

1. Pallet Number
2. Box ID
3. Origin Pallet
4. Ballot Type
5. Date on Box Label
6. Origin Corral (A, B, C, D)
7. Process Designation: Unopened, Completed, Senate, Counted NPE, Partial Count, Partial PE

Pallet Number:						
Total Boxes						
Packed By:						
Pallet #	Box ID	Origin Pallet	Ballot Type	Date	Origin Corral	Process Designation

Corral A- Full shrink-wrapped, uncounted pallets will be loaded first – 27 pallets

Corral D- All boxes in the Senate holding corral will be consolidated onto 3 pallets

Corral B – All boxes in the completed corral will be consolidated onto 8 pallets.

Corral C – All boxes in the holding corral will be consolidated onto 10 pallets. Pallets will be designated as counted but not processed through paper examination, partially counted, partial PE.

The pallets will be loaded onto the trucks by corral in the following order: **A, B, C, D**

Schedule of Secured Transfer/Storage of Ballots and Tabulation Machines

Building B (Moving to)

Wed. May 12th, 1200 hrs. - Install Security Fencing

Thur. May 13th, 0700 hrs. – Security Personnel Assigned 24/7 until Sun. May 23rd 1900 hrs.

0730 hrs. – Security Sweep Conducted

TBD – Installation of Cameras

Building Security Established 1600 hrs.

Coliseum (Moving from)

Thur. May 13th, 2000 hrs. – Audit Paused

Security Personnel remain 24/7 through May 14th at 1900 hrs. when all audit property has been securely moved to Bldg B.

2000 hrs. – Load Manifested Tabulation Machines into 53’ Dry Van inside of coliseum. Trailer is Locked and Sealed inside of Coliseum until moved.

Fri. May 14th, 0700 hrs. – Sealed and Locked Trailer containing tabulation machines are transported under armed escort and video surveillance to Building B where it will be parked inside in same locked and sealed condition until its return to the Coliseum by May, 23rd.

0800 – 1200 hrs. Inventoried Ballots by processing Category will be loaded onto Dry Vans inside of the coliseum by Pallet. Each Dry Van when Loaded will be Locked, Sealed and moved under armed escort and video surveillance to Building B where they will remain locked and sealed until their scheduled return to the coliseum May 23rd.

Locks to the Building and Trailers will be maintained at all times by the Designated Custodian(s) of the property (ballots and tabulation machines) and a record maintained of any and all access.

Any Access requested during the occupancy of Building B during the Storage not previously authorized will require pre-approval by the custodial owners and controlled by onsite security.